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SIPDIS
DEPARTMENT FOR EUR/CE

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TAGS: [GM](#) [MARR](#) [NATO](#) [PREL](#) [AF](#)
SUBJECT: NATO SOFA STATUS FOR USAFRICOM NON-DOD CIVILIANS:
PROBLEMATIC RESPONSE FROM THE GERMAN GOVERNMENT

REF: A. A. SECSTATE 167990
[1](#)B. B. BERLIN 00090
[1](#)C. C. SECSTATE 07402

Classified By: Charge d'Affaires John Koenig for reasons 1.4 (b) and (d)
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[1](#)1. (U) On July 21, 2008, Embassy Berlin received a letter (dated July 14, 2008) from Foreign Office Legal Adviser Georg Witschel on SOFA issues related to non-DOD U.S. Government civilian employees serving at USAFRICOM. Witschel's letter was in reply to the Embassy's June 19, 2008 letter, which requested a response to the Embassy's January 25, 2008 Diplomatic Note on the status under the NATO SOFA of U.S. Government civilian employees serving at USAFRICOM. (reftels A, B and C)

[1](#)2. (C) Witschel's July 14 letter indicates German agreement that dual-appointed USG civilians are entitled to status under the NATO SOFA -- this is a step forward. We have several concerns, however, about the German response. First, the letter indicates that dual-appointed civilians must serve a troop support role. Second, the letter limits the number of dual-appointed civilians to 100. Third, the letter indicated that other non-DoD civilian employees not meeting these requirements (dual appointment and troop support) would not be eligible for NATO SOFA status.

[1](#)3. (C) Embassy Berlin believes the numerical limit is inappropriate in light of our position that dual-appointed civilians clearly qualify as members of the civilian component under Article I of the NATO SOFA. The numerical limit was previously mentioned in our Diplomatic Note of January 25, 2008 in reference to non-DoD civilian employees that would not be dual appointed, but was never intended to be applied to those employees with dual appointments. Further, the specification that dual-appointed civilians must be in a troop support role is inappropriate for members of the civilian component and inconsistent with past practice. Finally, the small number of civilian employees that would not be dual appointed, including POLADs, are excluded from the NATO SOFA entirely according to the letter. Because the dual appointment of certain non-DoD civilian employees may not be feasible, this is an area of concern.

[1](#)4. (C) The Charge plans to discuss this issue on August 6 with Peter Ammon, the newly appointed State Secretary responsible for this subject, who assumes his duties on August 4. The Charge has already noted our concerns and the importance of finding mutually acceptable arrangements in meetings with State Secretary Reinhard Silberberg and Deputy National Security Advisor Rolf Nikel on July 25, 2008.

[1](#)5. (SBU) The following is an unofficial embassy translation of Witschel's July 14 letter:

Dear (Minister) Mr. Koenig,

Thank you very much for your letter to State Secretary Boomgaarden, dated June 19, 2008.

I was happy to have the opportunity to meet General Ward on June 27, 2008 and would like to wish your government success in building up AFRICOM. At the same time, I would like to ask for your understanding that we have to draw a clear line on the question on the status of the civilian employees related to AFRICOM.

Civilian employees of the U.S. government, who are not part of the Department of Defense's area of responsibility, are regarded as members of the civilian component through dual appointments, as long as they are at least functionally and disciplinarily under Department of Defense supervision and work for AFRICOM directly. Furthermore these personnel must be in support of military forces.

However, this only applies as long as the total number 100 civilian employees who are not part of the Department of Defense's area of responsibility, mentioned in the embassy's verbal note 2266 from January 25, 2008, is not exceeded.

Civilian employees of the U.S. government, not fulfilling these requirements, do not qualify for special legal status under the NATO status of forces agreement.

Yours sincerely,

Georg Witschel

16. (C) Unless otherwise directed, the Charge will deliver the following response-- which has been coordinated with USAFRICOM -- at the August 6 meeting:

Dear Dr. Witschel:

The United States appreciates Germany's continued support for the new United States Africa Command (AFRICOM) as set forth in your letter of July 14, 2008, addressing U.S. Government civilian employees at AFRICOM. However, there are several issues we would like to clarify.

Our non-paper, dated April 11, 2008, and my letter, dated June 19, 2008, explain that under United States law, U.S Government civilian employees may be dual appointed to the Department of Defense and another federal agency. While working at AFRICOM, in furtherance of the Command's mission, these dual-appointed personnel become Department of Defense employees and serve under the authority and supervision of AFRICOM.

Under Article I of the NATO Status of Forces Agreement (SOFA), any civilian employee that is appointed to work for the Department of Defense is considered in the "employ of an armed service" and part of the "civilian component" entitled to SOFA status. Further, the number of employees that can be dual appointed as employees of the Department of Defense and serve in Germany is limited only by the Presence Convention. The numerical limitation of 100 and the requirement that the civilians be providing support to the troops noted in your letter would unilaterally redefine the meaning of the term "civilian component" under the NATO SOFA. As such, it is inconsistent with the agreements between the United States and Germany and a divergence from past practice.

The unique mission of AFRICOM reinforces the need for flexibility in interagency participation and the application of NATO SOFA coverage. Interagency cooperation is an organic feature of AFRICOM. It reflects AFRICOM's innovative nature as "Vernetzte Sicherheit" in practice. It is essential that we find a way to develop this feature of AFRICOM. This can only be accomplished with the flexibility to dual appoint civilians as Department of Defense employees, or in limited

circumstances, choose not to dual appoint civilians. Especially important in this regard is that the U.S. Government agencies retain the ability to send liaison officers to AFRICOM. These officers' primary role lies in reporting to their parent agencies. Thus, they cannot be dual appointed, even while their contribution to a broader concept of national security is undisputed.

As we conveyed in our previous correspondence, it is our intention, at present, to effect dual appointments to the Department of Defense for all new civilians from other U.S. Government agencies working at AFRICOM. While we also anticipate that the total number of such dual appointments would not exceed 100, we do not believe we are legally limited to 100 dual-appointee civilians.

Our Diplomatic Note and my previous letter addressed the status of civilian employees who are not dual appointed. Although at this juncture we can address the needs of AFRICOM through the use of dual appointments, we would also like to further pursue a method of obtaining SOFA status for a small number of civilian employees who, although they cannot be dual appointed, remain essential for success in the broader scope of AFRICOM's national and international security mission. Consistent with prior practice, an exchange of diplomatic notes providing SOFA coverage for this small number of civilian employees would be, in our view, a very acceptable method of achieving this goal.

We appreciate Germany's continued support for U.S. forces stationed in the Federal Republic and look forward to further discussion on the status of civilian employees at AFRICOM.

Sincerely,

John M. Koenig

17. (U) After the letter is delivered at the meeting on August 6, Embassy Berlin will continue to work with its German counterparts to address the treatment of AFRICOM non-DoD civilian employees under the NATO SOFA.

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